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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JOHN CHRISTOPHER MESKER,

Defendant and Appellant.

A146252

(Sonoma County
Super. Ct. No. SCR653198)

On appeal from a conviction for leaving the scene of a vehicular accident resulting in death, defendant John Christopher Mesker contends it was an abuse of discretion for the trial court to impose a probation condition requiring him to pay the funeral expenses incurred by the decedent's family. Defendant argues that the restitution order does not reasonably relate to the offense or to future criminality because he was not at fault for the victim's death. Because we conclude the trial court acted within the bounds of its discretion, we shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Shortly after 4:00 a.m. on July 12, 2014, Sonoma County Sheriff's deputies responded to a call of a possible body along Petaluma Hill Road.¹ Along the shoulder of the road they found a deceased man identified as Basilio Nathan Garza, who they determined had been hit by a vehicle. Garza's girlfriend arrived on the scene 30 minutes

¹Because the conviction resulted from a plea, we take the relevant facts from the probation report.

later and told officers that Garza and a friend had an altercation at about 1:45 a.m. after leaving a bar. Garza refused his girlfriend's offers to pick him up and insisted on walking home.

Later that morning, Rohnert Park police officers responded to a report that a vehicle with fresh collision damage was parked a short distance from the accident scene on Holly Avenue. Officers obtained a warrant to search the residence of the vehicle's registered owner, who was identified as defendant's wife.

When officers arrived to execute the warrant, a neighbor told them that defendant had recently been driving the vehicle. A search of the wife's cell phone revealed text messages with defendant's mother about the accident. At the officers' request, defendant's mother called defendant and told him the officers wanted to speak with him. Two days after the accident, defendant surrendered himself to authorities at the local office of the California Highway Patrol. Defendant's driver's license was suspended at the time of the accident due to an arrest for driving under the influence in the prior month.

The autopsy report concluded Garza died from blunt force head trauma due to the vehicle collision. The report confirmed that Garza was intoxicated at the time of the collision and concluded "Garza was at fault for the collision as he was walking in the roadway prior to being struck."

The Sonoma County District Attorney filed a two-count complaint charging defendant with the felony offense of leaving the scene of a vehicular accident resulting in death (Veh. Code, § 20001, subd. (a)) and the misdemeanor offense of driving with a suspended license (Veh. Code, § 14601, subd. (a)). The district attorney further alleged that defendant had two prior felony convictions within the meaning of Penal Code section 1203, subdivision (e)(4), rendering defendant presumptively ineligible for probation. Defendant subsequently succeeded in having his prior felonies reduced to misdemeanors pursuant to Proposition 47, thereby making him eligible to be considered for probation.

Defendant entered a plea of no contest to the charge of leaving the scene of a vehicular accident resulting in death. In exchange for the plea, the prosecutor agreed to dismiss the misdemeanor charge of driving with a suspended license.

Before sentencing, defendant was interviewed in jail by the probation department. He reported that he was driving in the early morning hours and struck Garza, who was in the roadway, after coming around a turn. He braked and attempted to avoid hitting Garza but collided with him. Defendant stopped and left his vehicle to check on Garza. Defendant could see that Garza was not moving and assumed he was dead. According to defendant, he did not know what to do. He claimed his cell phone had no power and there was no traffic at that hour. He drove his car a short distance and parked under a light. He attempted to flag down a vehicle but was unsuccessful. He then decided to run two miles to his mother's house.

Defendant claimed he was sober at the time of the collision. However, as noted by the probation department and a psychologist assigned to conduct a diagnostic evaluation of defendant, there is no way to ever know whether defendant was under the influence at the time of the collision in light of the fact that he waited more than two days to turn himself in.

The probation officer's report recommended that defendant pay \$20,557.50 to Garza's mother for funeral expenses. Defendant's attorney objected on the ground that defendant's criminal conduct of fleeing the scene was not the cause of Garza's death.

At sentencing, the court imposed the upper term of four years in state prison for leaving the scene of a vehicular accident resulting in death. The court suspended execution of sentence and placed defendant on 60 months of formal probation with placement in a minimum six-month residential substance abuse treatment program. As a condition of probation, the court ordered defendant to pay restitution of \$20,557.50, representing the funeral expenses incurred by Garza's mother. This timely appeal followed.

DISCUSSION

Defendant's sole contention on appeal is that the trial court abused its discretion in requiring him to pay the decedent's funeral expenses as a condition of probation. He argues that the condition is not reasonably related to the criminal offense of leaving the scene of a fatal vehicle accident or to future criminality. In effect, he contends his criminal conduct of fleeing the scene did not cause the decedent's family to incur funeral expenses, which the family would have had to bear irrespective of what he did after the accident. As we explain, defendant's focus on causation is misplaced, at least in the context of restitution imposed as a condition of probation.

"In granting probation, courts have broad discretion to impose conditions to foster rehabilitation and to protect public safety pursuant to Penal Code section 1203.1." (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1120 (*Carbajal*)). It has long been recognized that restitution is a valid condition of probation. (*Id.* at p. 1121.) Further, "California courts have long interpreted the trial court's discretion to encompass the ordering of restitution as a condition of probation *even when the loss was not necessarily caused* by the criminal conduct underlying the conviction." (*Ibid.*, italics added.) "That a defendant was not personally or immediately responsible for the victim's loss does not render an order of restitution improper." (*In re I.M.* (2005) 125 Cal.App.4th 1195, 1209.) The court may order restitution as a condition of probation when the victim's loss did not result from the crime underlying the conviction as long as the restitution order serves one of the purposes set out in Penal Code section 1203.1, subdivision (j), such as providing for the reformation and rehabilitation of the probationer. (*Carbajal, supra*, at p. 1122.) We consider whether the lower court abused its discretion in imposing restitution as a condition of probation by applying the test set forth in *People v. Lent* (1975) 15 Cal.3d 481, 486 (*Lent*): "[A] condition of probation which requires or forbids conduct which is

not itself criminal is valid if that conduct is reasonably related to the crime of which the defendant was convicted or to future criminality.”²

In *Carbajal*, our Supreme Court applied the *Lent* criteria in assessing the propriety of a probation condition requiring a hit-and-run driver to pay restitution to the victim for the property damage caused by the accident. (*Carbajal*, *supra*, 10 Cal.4th at pp. 1119, 1123.) The defendant in *Carbajal* correctly observed that the restitution condition related to conduct that was “not in itself necessarily criminal, i.e., the probationer’s driving at the time of the accident.” (*Id.* at p. 1123, fn. omitted.) But the court concluded the condition was nonetheless valid under *Lent* because it reasonably related to both the crime of which the defendant was convicted and the goal of deterring future criminality. (*Ibid.*) First, the court reasoned that restitution related to the crime of leaving the scene of the accident because a fleeing driver “deprives the nonfleeing driver of his or her right to have responsibility for the accident adjudicated in an orderly way according to the rules of law.” (*Id.* at p. 1124.) The court observed that a hit-and-run offense imposes real and not just abstract costs on society. Second, restitution served the purpose of deterring future criminality “[b]y seeking to force the defendant to accept the responsibility he attempted to evade by leaving the scene of the accident without identifying himself” (*Ibid.*)

Relying on *Carbajal* and *Lent*, Division One of this court upheld a condition of probation that required a juvenile defendant who was an accessory after the fact to murder to pay over \$15,000 in restitution to cover the expenses of the victim’s funeral. (*In re I.M.*, *supra*, 125 Cal.App.4th at pp. 1199, 1208–1211.) The defendant in *I.M.*

²As the court explained in *People v. Rubics* (2006) 136 Cal.App.4th 452, in imposing restitution as a condition of probation, a court is not limited to damages “specifically caused by the crime of which the defendant was convicted” as long as the condition satisfies the *Lent* criteria. (*Id.* at pp. 459–460.) This is true, in part, because probation is an act of clemency, and the defendant is free to refuse probation if he feels the terms of probation are too harsh. (*Id.* at p. 459.) By contrast, when the defendant is sentenced to prison, “[a]n entirely different set of constitutional considerations comes into play” (*Id.* at p. 460.) In such a case, “restitution must be for economic damages resulting from the crime of which [the defendant] was convicted, not merely those ‘reasonably related’ to the crime.” (*Ibid.*)

objected that his criminal conduct did not cause the victim's family to incur funeral expenses; the defendant pointed out that his criminal liability was based on conduct that took place only after the victim died. (*Id.* at p. 1208.) Citing *Carbajal*, the court in *I.M.* rejected the defendant's emphasis on causation for the loss. (*Id.* at p. 1209.) The court concluded the restitution order served "a rehabilitative purpose by bringing home to the defendant the consequences of his gang membership." (*Ibid.*) According to the court, "[t]he effect of the order is to make defendant aware of the consequences of his choice by compelling him to share responsibility for the gang-related activities in which he in some way participated." (*Id.* at p. 1210.)

In this case, the restitution order serves both rehabilitative and crime-deterrence goals. The order plainly relates to the crime of leaving the scene of an accident resulting in death. Defendant's actions imposed real costs on society because resources had to be devoted to tracking him down to determine what happened and who might have been at fault. The order serves a rehabilitative purpose by forcing defendant to confront the consequences of his decision to evade his social responsibility and leave the scene of an injury accident that took the victim's life. (See *Carbajal*, *supra*, 10 Cal.4th at p. 1125.) It also deters crime because it has the effect of discouraging defendant from fleeing the scene of an accident in the future. The crime-deterrence aspect of the order is particularly relevant in light of defendant's history of committing drug offenses, driving while his license is suspended, and "making poor decisions," as the probation report outlined.

Defendant contends that his actions imposed limited costs on society and that, therefore, the restitution order is not reasonably related to his conviction for leaving the scene of an accident. More specifically, he claims that by leaving a vehicle with obvious collision damage near the scene of the accident, he facilitated his identification and made it easier to track him down. We are not persuaded that defendant should be rewarded for his clumsy and ineffective attempt to avoid having authorities learn about his role in the fatal accident. "There is no requirement the restitution order be limited to the exact amount of the loss in which the defendant is actually found culpable" (*Carbajal*, *supra*, 10 Cal.4th at p. 1121.) Thus, the validity of the probationary restitution order does

not turn on whether defendant was more or less successful in delaying his identification as the driver in the collision that caused Garza's death.

Defendant also argues that restitution is inappropriate here because his actions did not cause or contribute to Garza's death. He claims Garza was already dead when he fled and that Garza was at fault for the collision. As an initial matter, we observe that defendant's role in the accident and its aftermath will never be known with certainty because defendant fled the scene. He did not know but merely assumed Garza was dead, and even that claim is a self-serving statement that cannot effectively be disproven. In addition, while the autopsy apparently concluded that Garza was at fault for the collision, there is no way to know whether defendant was under the influence at the time of the collision—and thus may share some blame for the accident—in light of the delay in turning himself in. Even assuming defendant did not cause or contribute to Garza's death, his contention is based on the faulty assumption that restitution as a condition of probation is only appropriate when the loss was caused by the crime of which the defendant was convicted. (*Carbajal, supra*, 10 Cal.4th at p. 1122.) Where, as here, the restitution order is reasonably related to the crime or to future criminality, it is properly imposed as a condition of probation. (*Id.* at p. 1123.) Accordingly, we conclude the court acted within its discretion in imposing restitution as a condition of probation.

DISPOSITION

The judgment is affirmed.

McGuiness, P.J.

We concur:

Pollak, J.

Jenkins, J.

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